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June 12, 1956

SEP 22 1998

CONCORD, N.H.

James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Harry A. Clogston
Pierce Nursing Home, Enfield, N. H.

Dear Mr. Barry:

This is in response to your request of June 6 for our opinion as to whether Harry A. Clogston qualifies for old age assistance. You advise that the applicant is senile and that in April of 1951 his guardian arranged for him to be admitted to the Pierce Nursing Home so he could receive nursing care which was not available in Vermont. The guardian currently resides in Vermont and Mr. Clogston resided there prior to going to the nursing home.

RSA 167:6 (a) provides that

"For the purposes hereof a person shall be eligible for old age assistance who is sixty-five years of age; is not on account of his physical condition in need of continued public institutional care; is a citizen of the United States and has been a resident of the state for at least five years within the nine years immediately preceding his application for such aid and has resided in the state continuously for one year immediately preceding said application." *[Emphasis added]*

Your inquiry is specifically directed to the question of whether Mr. Clogston's presence at the nursing home for the past five years satisfies the condition that the applicant "has been a resident of the state for at least five years within the nine years immediately preceding his application for such aid."

C O P Y

Mr. James J. Barry

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Residence connotes more than mere physical presence within the state. It is akin to domicile. To qualify as a resident the applicant must be present in the state on his own volition and must intend to remain here for an indefinite period of time.

Your letter indicates that Mr. Ologston is not in the state of his own volition but has been placed in the nursing home by his guardian. If such is the case - i.e., if the applicant at the time of his arrival in Enfield lacked the mental capacity to make a choice, he cannot be considered as a resident and consequently is not eligible for assistance.

Very truly yours,

Elmer T. Bourque
Assistant Attorney General

ETB/sml